

SENATE NO. 480

AN ACT RELATIVE TO ESTABLISHING MASSACHUSETTS LAND CONSERVATION INCENTIVES

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. This Act shall be known as the "Massachusetts Land Conservation Incentives
2 Act."

3 SECTION 2. Purpose and Findings.

4 WHEREAS, the land and water in the Commonwealth of Massachusetts provide a variety of
5 important public benefits, including, but not limited to, the protection of drinking water
6 supplies, wildlife habitat and biological diversity, agricultural and forestry production,
7 recreational opportunities, archaeological and historical resources, or scenic and cultural values,
8 but these privately-owned lands are being permanently developed at an alarming rate;

9 WHEREAS, private landowners should be encouraged by the commonwealth to be stewards of
10 their lands for the protection of public benefits, including, but not limited to, drinking water
11 supplies, wildlife habitat and biological diversity, agricultural and forestry production,
12 recreational opportunities, archaeological and historical resources, or scenic and cultural values;

13 WHEREAS, the commonwealth should provide private landowners with incentives to
14 encourage and enhance the conservation of such lands.

15 SECTION 3. Definitions.

16 Section 6 of chapter 62 of the general laws is hereby amended by adding the following new
17 subsection:-

18 As used in this subsection the following words shall have the following meanings:-

19 (a) "Bargain sale," the sale of an interest in real property by a taxpayer at a cost below
20 appraised market value, when a portion of the value of the interest in real property is a qualified
21 donation, as such terms are defined herein, and which meets the requirements of Section
22 1011(b) of the Internal Revenue Code of 1986, as amended.

23 (b) "Certified land" or "certified lands," an interest in real property, as defined herein, the
24 donation or bargain sale of which, as defined herein, has first been determined by the secretary
25 of environmental affairs to be in the public interest for natural resource protection, including,
26 but not limited to, drinking water supplies, wildlife habitat and biological diversity, agricultural
27 and forestry production, recreational opportunities, archaeological and historical resources, or
28 scenic and cultural values. The secretary of environmental affairs shall assure that all certified
29 lands are protected in perpetuity.

30 (c) "Interest in real property," any right in real property in the Commonwealth of
31 Massachusetts, with or without improvements thereon, or water, including, but not limited to,
32 fee simple, life estate, restriction, easement, covenant, condition, partial interest, remainder,
33 future interest, lease, license, mineral right, riparian right, or other interest or right in real
34 property that may be conveyed concerning the power to transfer property.

35 (d) "Public or Private Conservation Agency," the Commonwealth of Massachusetts, or any
36 subdivision thereof, or any municipality, or private nonprofit corporation organized for the
37 purposes of land conservation, which is authorized to do business in the Commonwealth of
38 Massachusetts, and which has tax-exempt status as a nonprofit charitable organization as
39 described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

40 (e) "Qualified donation," a donation, or the donated portion of a bargain sale, made in
41 perpetuity of a fee interest in real property or a less-than-fee interest in real property, including a
42 conservation restriction, agricultural preservation restriction or watershed preservation
43 restriction, pursuant to chapter 184 of the general laws, provided that such less-than-fee interest
44 meets the requirements of Qualified Conservation Contributions under the Internal Revenue
45 Code of 1986, Section 170(h).

46 (f) "Taxpayer," a taxpayer subject to the income tax under this chapter.

47 SECTION 4. Tax Credit Available.

48 Section 6 of Chapter 62 of the general laws is hereby amended by adding the following new
49 subsection: -

50 (a) Land Conveyed for Conservation Purposes. A taxpayer making a qualified donation of
51 certified land to a public or private conservation agency shall be allowed a credit against the
52 taxes imposed by this chapter. The credit shall be equal to 50 percent of the fair market value of
53 the qualified donation. The amount of the credit that may be claimed by a taxpayer for each
54 qualified donation shall not exceed fifty thousand dollars.

55 (b) The fair market value of certified land shall be substantiated by a Qualified Appraisal, as
56 defined in United States Treasury Regulation Section 1.170A-13(c)(3), and shall be prepared by
57 a Qualified Appraiser, as defined in United States Treasury Regulation Section 1.170A-
58 13(c)(5). For any taxpayer to qualify for the credit provided for in subsection (a) of this section,
59 the taxpayer shall at the same time as the taxpayer files a return for the taxable year in which the
60 credit is claimed, file with the department a summary of a Qualified Appraisal, or if requested
61 by said department, the taxpayer shall submit the appraisal itself.

62 (c) In any one tax year the credit used may not exceed the amount of tax liability otherwise
63 owed by the taxpayer. The tax credit shall be taken against the taxes imposed under this chapter
64 and shall not be refundable. Any amount of the credit that exceeds the tax due for a taxable year
65 may be carried forward by the taxpayer to any of the 10 subsequent tax years.

66 (d) The tax credits provided by this subsection shall apply to transfers of interests in real
67 property in taxable years beginning on or after January 1, 2008 and consecutive taxable years
68 thereafter.

69 (e) All or any tax credits issued in accordance with this section may be in addition to any
70 charitable deductions claimed on the taxpayer's federal income tax return for the same qualified
71 donations of certified lands.

72 (f) Any taxpayer claiming a state income tax or excise tax credit under this section may not
73 claim an additional state income tax credit or deduction during any one tax year for costs related
74 to the same interest in certified lands.

75 (g) All or any tax credits which arise under this section from the qualified donation of certified
76 land by a pass-through tax entity such as a trust, estate, partnership, corporation, limited
77 partnership, limited liability partnership, limited liability corporation, subchapter S organization,
78 or other fiduciary, shall be used either by such entity in the event it is the taxpayer on behalf of
79 such entity or by the member, partner, shareholder, or beneficiary, as the case may be, in
80 proportion to their interest in such entity in the event that income, deductions, and tax liability
81 passes through such entity to such member, partner, shareholder, or beneficiary. Such tax
82 credits may not be claimed by both the entity and the member, partner, shareholder, or
83 beneficiary, for the same conveyance.

84 (h) All or any tax credits which arise under this chapter from the qualified donations of certified
85 land by a married couple shall be used only if the spouses file a joint return, if both spouses are
86 required to file Massachusetts income tax returns. If only one spouse is required to file a
87 Massachusetts income tax return, that spouse may claim the credit allowed by this chapter on a
88 separate return.

89 SECTION 5. Definitions.

90 Chapter 63 of the General Laws is hereby amended by adding the following new section:-

91 Section 38U. As used in this section the following words shall have the following meanings:-

92 (a) "Bargain sale," the sale of an interest in real property by a taxpayer at a cost below
93 appraised market value, when a portion of the value of the interest in real property is a qualified
94 donation, as such terms are defined herein, and which meets the requirements of Section
95 1011(b) of the Internal Revenue Code of 1986, as amended.

96 (b) "Certified land" or "certified lands," an interest in real property, as defined herein, the
97 donation or bargain sale of which, as defined herein, has first been determined by the secretary
98 of environmental affairs to be in the public interest for natural resource protection, including,
99 but not limited to, drinking water supplies, wildlife habitat and biological diversity, agricultural
100 and forestry production, recreational opportunities, archaeological and historical resources, or
101 scenic and cultural values. The secretary of environmental affairs shall assure that all certified
102 lands are protected in perpetuity.

103 (c) "Interest in real property," any right in real property in the commonwealth of Massachusetts,
104 with or without improvements thereon, or water, including, but not limited to, fee simple, life
105 estate, restriction, easement, covenant, condition, partial interest, remainder, future interest,

106 lease, license, mineral right, riparian right, or other interest or right in real property that may be
107 conveyed concerning the power to transfer property.

108 (d) "Public or Private Conservation Agency," the Commonwealth of Massachusetts, or any
109 subdivision thereof, or any municipality, or private nonprofit corporation organized for the
110 purposes of land conservation, which is authorized to do business in the Commonwealth of
111 Massachusetts, and which has tax-exempt status as a nonprofit charitable organization as
112 described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

113 (e) "Qualified donation," a donation, or the donated portion of a bargain sale, made in
114 perpetuity of a fee interest in real property or a less-than-fee interest in real property, including a
115 conservation restriction, agricultural preservation restriction or watershed preservation
116 restriction, pursuant to chapter 184 of the general laws, provided that such less-than-fee interest
117 meets the requirements of Qualified Conservation Contributions under the Internal Revenue
118 Code of 1986, Section 170(h).

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120 SECTION 6. Tax Credit Available.

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123 certified land to a public or private conservation agency shall be allowed a credit against the
124 taxes imposed by this chapter. The credit shall be equal to 50 percent of the fair market value of
125 the qualified donation. The amount of the credit that may be claimed by a taxpayer for each
126 qualified donation shall not exceed fifty thousand dollars.

127 (b) The fair market value of certified land shall be substantiated by a Qualified Appraisal, as
128 defined in United States Treasury Regulation Section 1.170A-13(c)(3), and shall be prepared by

129 a Qualified Appraiser, as defined in United States Treasury Regulation Section 1.170A-
130 13(c)(5). For any taxpayer to qualify for the credit provided for in subsection (a) of this section,
131 the taxpayer shall at the same time as the taxpayer files a return for the taxable year in which the
132 credit is claimed, file with the department a summary of a Qualified Appraisal, or if requested
133 by said department, the taxpayer shall submit the appraisal itself.

134 (c) In any one tax year the credit used may not exceed the amount of tax liability otherwise
135 owed by the taxpayer. The tax credit shall be taken against the taxes imposed under this chapter
136 and shall not be refundable. Any amount of the credit that exceeds the tax due for a taxable year
137 may be carried forward by the taxpayer to any of the 10 subsequent taxable years.

138 (d) The tax credits provided by this chapter shall apply to transfers of interests in real property
139 in taxable years beginning on or after January 1, 2008 and consecutive taxable years thereafter.

140 (e) All or any tax credits issued in accordance with this section may be in addition to any
141 charitable deductions claimed on the taxpayer's federal income tax return for the same qualified
142 donations of certified lands.

143 (f) Any taxpayer claiming a state income tax or excise tax credit under this section may not
144 claim an additional state income tax credit or deduction during any one tax year for costs related
145 to the same interest in certified lands.

146 (g) All or any tax credits which arise under this section from the qualified donation of certified
147 land by a pass-through tax entity such as a trust, estate, partnership, corporation, limited
148 partnership, limited liability partnership, limited liability corporation, subchapter S organization,
149 or other fiduciary, shall be used either by such entity in the event it is the taxpayer on behalf of
150 such entity or by the member, partner, shareholder, or beneficiary, as the case may be, in
151 proportion to their interest in such entity in the event that income, deductions, and tax liability

152 passes through such entity to such member, partner, shareholder, or beneficiary. Such tax
153 credits may not be claimed by both the entity and the member, partner, shareholder, or
154 beneficiary, for the same conveyance.

155 SECTION 7. Administration.

156 (a) The secretary of the executive office of environmental affairs shall promulgate regulations
157 that define land eligible for certification under this section 6 of chapter 62 and under section
158 38U of chapter 63. Regulations shall be promulgated within 180 days of passage of these
159 sections.

160 (b) The secretary of environmental affairs, within five years of passage of this act, shall prepare
161 a report to the joint committee on revenue and the joint committee on environment, natural
162 resources and agriculture, describing the certified lands conserved under section 6 of chapter 62
163 and section 38U of chapter 63.

164 (c) The commissioner of revenue, in consultation with the secretary of the executive office of
165 environmental affairs, shall promulgate regulations to administer under section 6 of chapter 62
166 and section 38U of chapter 63. Such regulations shall include provisions to prevent the
167 generation of multiple credits with respect to the same property. Regulations shall be
168 promulgated within 180 days of passage of this act.

169 (d) The commissioner, within five years of passage of this chapter, shall prepare a report to the
170 joint committee on revenue and the joint committee on environment, natural resources and
171 agriculture, calculating the annual tax savings under section 6 of chapter 62 and section 38U of
172 chapter 63.

173 (e) There shall be a commission to study the transferability of tax credits under section 6 of
174 chapter 62 and section 38U of chapter 63. The commission shall be composed of nine persons,

175 including the commissioner of the department of agricultural resources, or his designee, who
176 shall serve as chairman; the commissioner of the department of revenue, or his designee; two
177 members of the house of representatives, to be appointed by the speaker of the house of
178 representatives; two members of the senate, to be appointed by the president of the senate; a
179 representative of the American Farmland Trust; a representative of the Massachusetts Audubon
180 Society; a representative of The Nature Conservancy. The commission shall examine all
181 aspects of transferability, including but not limited to: the status of its application in other states,
182 potential fiscal impacts, and potential conservation benefits. The commission shall file a report
183 of its findings and recommendations, including any drafts of legislation necessary to put its
184 recommendations into effect, with the joint committee on revenue and joint committee on
185 environment, natural resources and agriculture on or before January 1, 2009.

186 SECTION 8. Construction.

187 Nothing in this act shall be interpreted in any way to alter or amend any permitting
188 requirements, reporting requirements, allocation procedures, or other requirements set forth in
189 any other provision of the general laws.